IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1485 of 2007

Dharmaraj .. Petitioner

Vs

1. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamil Nadu
   Fort St. George, Chennai-600 009.

2. Office of the District Collector &
   District Magistrate
   Perambalur District
   Perambalur. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.A.K.S.Thahir
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, cousin brother of the detenu, Shankar, son of Vellaian, who was incarcerated by order dated 19.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in Cr.M.P.No.29/2007, to quash the same and to produce the detenu, who is now confined at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

2. The order of detention dated 19.9.2007 came to be passed based on the ground case said to have taken place on 21.8.2007. On that day, the Inspector of Police, Padalur Circle, who proceeded on a prohibition raid to Thenur Village, found the detenu selling arrack from a mud pot to the consumers, at the backyard of his house. On seeing the police party, the consumers ran away. The detenu was apprehended by the police party and seized 25 litres of country arrack. A case was registered in Crime No.109/2007 for the offence under Sections 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act. The samples which were sent for chemical analysis report disclose that the arrack contained 2.3% mg of atropine per 100 ml.

3. The second respondent, taking note of this case as a ground case and finding that there are three adverse cases pending against the detenu in Crime Nos.20/07 and 69/07 on the file of Padalur Police Station and Crime No.235/2007 on the file of Perambalur Prohibition Enforcement Wing for the offence under Sections 4(1)(a), read with 4(1-A) of the Tamil Nadu Prohibition Act and 328, IPC, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 19.9.2007 on the only ground of pre-determination of mind on the part of the sponsoring authority, as evident from their submission made in Crl.M.P.No.2031 of 2007 filed by the detenu seeking bail, on the file of Principal District and Sessions Court, Perambalur, wherein, even prior to the passing of the detention order dated 19.9.2007, the Government Advocate appeared on behalf of the sponsoring authority, objecting to the grant of bail to the detenu, had submitted that the sponsoring authority was taking steps to detain the detenu under the Boot

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Leggers Act and based on the said submission, the said Crl.M.P. was dismissed.

5. In the instant case, the detaining authority had not placed any material to satisfy that the detenu would indulge in the activities which would be prejudicial to the maintenance of public order and public health, if he is released on bail. In such circumstances, we are of the considered opinion that the impugned order of detention is vitiated. Accordingly, this petition is allowed. The order of detention is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The District Collector &
   District Magistrate
   Perambalur District
   Perambalur.

3. The Superintendent
   Central Prison, Tiruchirapalli.

4. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

5. The Public Prosecutor
   High Court, Madras.

MS(CO)
SR/7.1.2008 H.C.P.No.1485 of 2007.

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